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10/776,848

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February 11, 2004

First Named Inventor

MURPHY JR., H. Stetser

Art Unit

3765

Examiner Name

HURLEY, Shaun R.

Attorney Docket Number

22270-RA2

ENCLOSURES (Check all that apply)☐

Fee Transmittal Form

☐

Fee Attached

☐

Amendment/Reply

☐

After Final

☐

Affidavits/declaration(s)

☐

Extension of Time Request

☐

Express Abandonment Request

☐

Information Disclosure Statement

☐

Certified Copy of Priority Document(s)

☐Reply to Missing Parts/
Incomplete Application☐Reply to Missing Parts
under 37 CFR 1.52 or 1.53☐

Drawing(s)

☐

Licensing-related Papers

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Petition

☐Petition to Convert to a
Provisional Application☐

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Proprietary Information

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Status Letter

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Myers & Kaplan Intellectual Property Law, LLC

Signature

Printed name

George P. Bonanto

Date

January 2, 2008

Reg. No.

59,717

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PATENT
10/776,848

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
Murphy Jr., H. Stetser)	Atty Docket: 22270-RA2
Serial No.: 10/776,848)	Examiner: Hurley, Shaun R.
Filed: February 11, 2004)	Group Art: 3765
For: CLOTHING HANGER)	

January 2, 2008

APPLICANT'S REPLY BRIEF

Mail Stop: Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Responsive to the Examiner's Answer mailed November 2, 2007, pursuant to 37 CFR 41.41, Applicant hereby files his Reply Brief to the Board of Patent Appeals and Interferences. Please find enclosed an Identification page, Status of Claims page, Appended Index of Claims pages, Grounds for Rejection to be Reviewed on Appeal page, Argument pages, and Conclusion page, wherein no new or non-admitted amendment, nor new or non-admitted affidavit or evidence is included, and the Reply Brief is therefore in compliance with 37 CFR 41.41.

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STATUS OF CLAIMS

Claims 1-21 are pending in the application. Each of claims 1-21 stands rejected as detailed in the final Office Action, mailed October 26, 2006. Applicant has sought appeal of the final rejection of each of claims 1-21.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection have been presented for review:

1. Claims 1-4, 6, 9, 10, and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (US 5,577,644);
2. Claims 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Bury et al (US 2,946,493);
3. Claims 5, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen ('644);
4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen ('644) in view of Chen (US 6,170,721);
5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen ('644) in view of Bury ('493); and
6. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen ('644) in view of Lehmann (US 4,872,568).

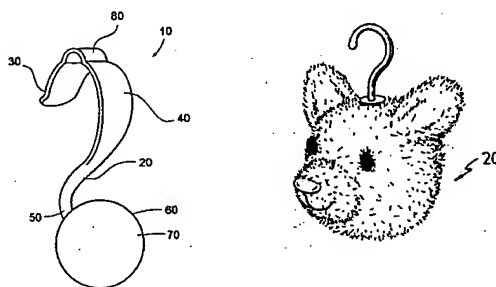
ARGUMENT

Ground 1, rejection of claims 1-4, 6, 9, 10, and 13-15

Claim 1

The Examiner's Answer has acknowledged Applicant's argument pertaining to the structural differences between Applicant's device and that of *Chen* (5,577,644), specifically Applicant's argument that the three-dimensional geometric shape of the garment hanger of Applicant's device is NOT the same as the three-dimensional geometric shape of the decorative member of *Chen* ('644); however, the Examiner maintains his position. Applicant provides the following comparative summary to re-demonstrate the previously-presented evidence and arguments in a concise pictorial format, clearly corroborating Applicant's position and invalidating the Examiner's contentions that the devices are capable of performing the same intended use.

Although *Chen* ('644) does NOT show a generally spherical-shaped garment hanger, but instead exhaustively lists numerous hanger forms (Col. 1, lines 61-67), none of which is spherical, wherein each hanger is decoratively joined to a self-described "toy doll," it is toy doll 20 that the Examiner argues is the same generally-spherical shaped member of Applicant's device. Therefore, in order to offer the most directly comparative pictorial illustration possible for direct evaluation of the Examiner's position, Applicant provides a portion of *Chen* ('644) Figure 7, below right, showing only swivel hook 60 and toy doll 20 with no hanger forms attached thereto, and Applicant's Figure 1A:

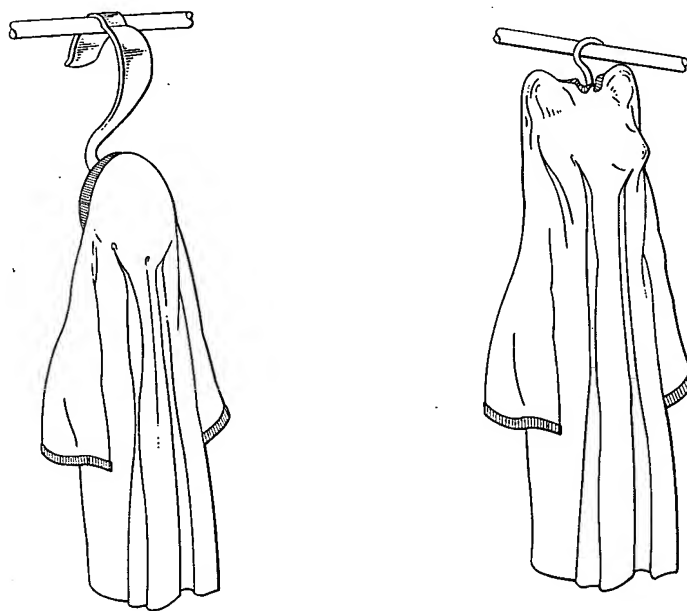


It is undisputed that a sphere is generally defined and well-accepted to be a round body whose surface is "at all points equidistant from the center." This shape is clearly shown in Applicant's ball 60, and is clearly NOT shown in toy doll 20 of *Chen* ('644). Unlike the simple geometric shape of Applicant's device, the toy doll 20 of *Chen* ('644) is clearly not a sphere, but is a combination of several geometric shapes resulting in a variable surface with a plurality of outwardly extending structures, and certainly NOT a surface with all points equidistant from the center.

While the Examiner dismisses the outwardly extending structures of *Chen* ('644) without comment, the contrastingly-spherical shape of Applicant's device is critical to the performance of

Applicant's device. Although not detailed or explained by the Examiner, the bolding of the word "generally" in the Examiner's Answer appears to indicate the foundational focus of the Examiner's position, that is, that Applicant's inclusion of the claim language "generally spherical" in lieu of "spherical" somehow invites other non-spherical, irregular shapes, although such a definition is neither supported by the specification nor understood in the art. The word "generally" is commonly accepted to mean "usually; as a rule; for the most part." The word in no way invites the irregularly-shaped toy doll 20 of *Chen* ('644), but, as would be understood by one skilled in the art, simply permits reading on a device that is slightly outside of spherical, but that is still able to perform as Applicant's device.

Clearly, as shown, toy doll 20 of *Chen* ('644) is NOT "sufficient in diameter and texture such that clothing draped upon it will remain in place and will not be deformed in shape." Contrary to the Examiner's assertion in page 5 of the Final Office Action, the structure of the prior art, namely *Chen* ('644), is NOT capable of performing the intended use, therefore, the claims are NOT anticipated. The irregular shape and outwardly extending structures, namely the nose and ears, of the toy doll 20 of *Chen* ('644) would necessarily cause deformation in any clothing article draped thereabout, as depicted below:



Such deformation is the primary problem that Applicant's device is designed to overcome. Applicant's device enables clothing to "experience minimal structural deformation," (p. 2, line 9), is suitable "for hanging draping material," (p. 5, line 17), "minimizes distortion of materials placed over ball 60, in particular, knit clothing," (p. 9, lines 1-3), and "clothing may be placed over individual balls 690, wherein apparatus 600 supports the clothing with minimal deformation." (p. 14, lines 14-16).

Furthermore, as discussed in Applicant's Appeal Brief, another clearly visible distinction between

Applicant's device and that of *Chen* ('644), which distinction further prevents performance of Applicant's intended use by *Chen* ('644) and which distinction has been dismissed by the Examiner without explanation, is that the hook 60 of *Chen* ('644) necessarily extends directly from the region where the article of clothing would need to drape if *Chen* ('644) were to be utilized in a manner similar to Applicant's device. The structure and physics of Applicant's device configuration differs from *Chen* ('644). Applicant's device includes an arcuate, preferably "S"-shaped hook defined by body portion 20, with hook portion 40 shaped to hang over a rod, extending outwardly, essentially perpendicularly from the rod), and with ball 60 joined such that an angle of approximately 45° from vertical is defined when garment hanger apparatus 10 is hanging. Even assuming, *arguendo*, that the toy doll 20 of *Chen* ('644) were spherical, the toy doll 20 hangs directly below the hook 60, in a straight vertical line, with no departure from vertical possible. Thus, unlike Applicant's device, not only does the shape of toy doll 20 cause deformation, the physical structure and hook configuration prevents hanging of a garment over toy doll 20 without obstruction by hook 60. At best, toy doll 20 of *Chen* ('644) could support a garment via the ears and nose of toy doll 20, but such a method of hanging would likely deform knits and the like.

Again, the toy doll of *Chen* ('644) is self-described as a component feature that is separate, and separable, from the hanger feature, and **is neither a garment hanger nor spherical-shaped, but is simply a central rod surrounded with a "skin" to define a decorative doll shape**. Thus, for the reasons stated above, and in Applicant's Appeal Brief, claim 1 is patentable over *Chen* ('644), and Claims 2-4, 6, 9 and 10, depending from claim 1, are allowable as well, at least for the reasons stated with respect to claim 1, and further as discussed hereinbelow.

Claim 4

As to Claim 4, Applicant refers again to the comparative illustrations hereinabove in discussion of potential "moldability" of *Chen* ('644) relative to Applicant's device. Although it is unclear, the Examiner's Answer appears to refute an argument that Applicant's device is not moldable. However, this is not Applicant's position. Applicant submits that it is the *Chen* ('644) device that is not moldable, that construction via moldable material is NOT taught by *Chen* ('644), nor would it be possible to form the *Chen* ('644) device by such a manner. Again, *Chen* ('644) is formed from a plurality of members, wherein the overall structure of the *Chen* ('644) device and the toy doll subcomponent (formed by a skin 21 covering rod 10 and coupled with caps 30 and 40. (Col. 2, lines 40-44)), are NOT suitable for moldable manufacture and are not described as being so manufactured.

Therefore, for the reasons stated above, and for the preceding reasons stated with respect to claim 1, claim 4 is patentable over *Chen* ('644).

Claim 13

As to Claim 13, the Examiner's Answer erroneously misstates Applicant's argument. Applicant does NOT argue that "one of ordinary skill in the art would not know how to operate or use a garment hanger without undue experimentation." The Examiner fails to address Applicant's argument relative to the Examiner's reference, *Chen* ('644). That is, *Chen* ('644) does NOT disclose the structure of Applicant's hanger and does NOT "inherently teach the method of using such a hanger," as claimed by The Examiner. First, *Chen* ('644) does NOT include Applicant's claimed "ball-shaped support." Further, as pictorially shown and discussed above relative to claim 1, *Chen* ('644) does NOT enable hanging on the "toy doll," but describes hanging relative to eight support members extending downwardly from the hanging toy doll. Thus, not only does *Chen* ('644) fail to describe a device that is capable of Applicant's method of hanging, but the hanging methods inherent in the hangers of *Chen* ('644), that is, extending through a ring, hanging on a hook, and clipping, are precisely the type of knit-deforming methods that Applicant's device serves to avoid and therefore Applicant's method cannot be anticipated by *Chen* ('644).

Thus, for the reasons stated above, claim 13 is patentable over *Chen* ('644). Claims 14 and 15, depending from claim 13, are allowable as well, at least for the reasons stated with respect to claim 13, and further as discussed hereinbelow.

Claim 15

As to Claim 15, the Examiner's Answer inexplicably references claim 15 in the preamble to the Examiner's response to unrelated claim 4, regarding moldability. The Examiner's Answer offers no response to Applicant's argument that the hangers and/or the toy doll as described by *Chen* ('644) are NOT utilized nor capable of a method involving "positioning a garment over and substantially covering the surface of said ball-shaped support for retention thereby." Again, not only does *Chen* ('644) fail to describe a ball over which materials could be draped, but the central positioning of the support extension of the *Chen* ('644) device would prevent a garment from being "hung over and substantially covering the surface" thereof.

Therefore, for the reasons stated above, and for the preceding reasons stated with respect to claim 13, claim 15 is patentable over *Chen* ('644).

Ground 2, rejection of claims 18-21

Claim 18

As to Claim 18, the Examiner's position is founded on a reformation of the hanger of *Bury* ('493)

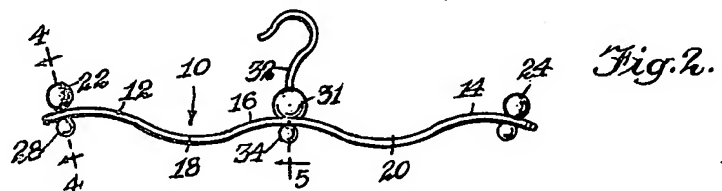
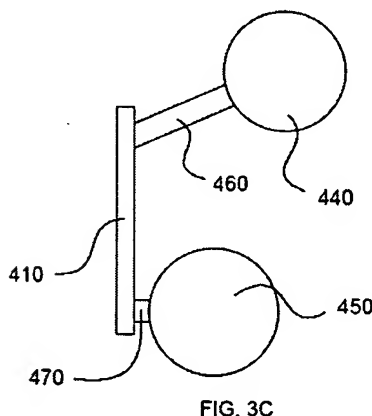
such that the elongate supporting bar 10 is formed from two opposingly extending arms that are integrally formed. Applicant's claim 18 requires each extending arm to have a first end and a second end, wherein the well-established meaning of the word "end" is "either extremity of something that has length; outside or extreme edge, limit or physical boundary." By definition, it is impossible to have an "end" in the middle of the length of an elongate structure.

The Examiner further "notes Applicant's claims and arguments drawn to an integral hanger which would make his arms one piece" in his discussion of claim 18; however, not only does claim 18 not include a limitation for "integral" formation, even if the elements of claim 18 were integrally formed, the structure would remain distinctly configured relative to the hanger of *Bury* ('493). The hanger of *Bury* ('493) does NOT have at least one two-ended extension arm wherein one end is secured to a support frame and the other end carries a ball, as is required by Claim 18. The hanger of *Bury* ('493) has a two-ended extension arm, CENTRALLY secured to a support hanger, with each of the two extended ends carrying a ball.

Thus, for the reasons stated above, claim 18 is patentable over *Bury* ('493). Claims 19-21, depending from claim 13, are allowable as well, at least for the reasons stated with respect to claim 18, and further as discussed hereinbelow.

Claim 19

As to Claim 19, the Examiner's Answer proffers that two opposingly positioned projections on the hanger bar of *Bury* ('493) satisfy Applicant's claimed "upper extension arm and lower extension arm" elements. Again, *Bury* ('493) describes a hanger device with a singular bar. As can be clearly seen in the representative comparison of Applicant's Figure 3C, below left, and Figure 2 of *Bury* ('493), below right, there is no provision, description, or depiction of two arms by *Bury* ('493), and *arguendo*, even if *Bury* ('493) were to be considered as an integral formation of two arms, there remains no conceivable manner of interpreting or incorporating an upper arm and a lower arm, as is required by Applicant's claim 19.

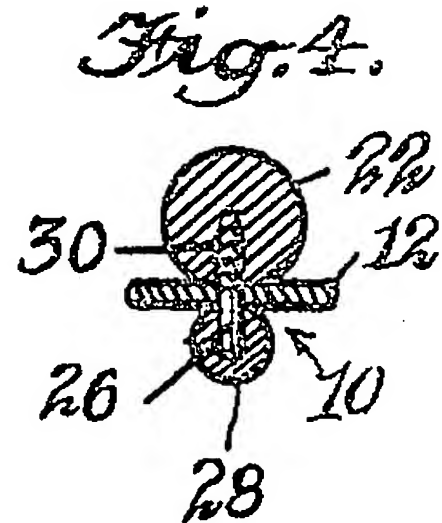


Because *Bury* ('493) does NOT describe or arrange two extension arms, one upper and one lower relative to one another, and each bearing a ball, as is required by claim 19, Applicant's device is not anticipated.

Therefore, for the reasons stated above, and for the preceding reasons stated with respect to claim 18, claim 19 is patentable over *Bury* ('493).

Claim 20

As to Claim 20, without further explanation, the Examiner states that Figure 4 of *Bury* ('493) discloses a relationship between the balls wherein "one upper ball extends approximately a diameter beyond one lower ball in a direction away from the surface (to which the support frame is secured)." Figure 4 of *Bury* ('493), right, is drawn from Figure 2 above, wherein it is simply apparent that contrary to the Examiner's unsupported conclusion, not only is there no potential to secure the support frame (hook 32, as argued by the Examiner) to a surface, the relationship of the upper and lower balls, extending from respective upper and lower arms, is not shown.



With reference to Applicant's FIG. 3C, and page 11, lines 15-19, Applicant discloses the claimed configuration, wherein performance is maximized "when they (upper hanger balls) extend outward a distance approximately equal to their diameter beyond lower hanger balls." No such configuration is depicted or described by *Bury* ('493), and no reference to any interpretation of any such feature is provided by the Examiner.

Therefore, for the reasons stated above, and for the preceding reasons stated with respect to claims 18 and 19, claim 20 is patentable over *Bury* ('493).

Ground 3, rejection of claims 5, 7, and 8

Claims 5, 7, and 8

The Examiner states that integrally molding Applicant's device would be obvious, however, fails to disclose a reference with the elements of claims 5, 7, and 8, whether or not moldable. Further, the Examiner's cited reference, *Chen* ('644), is NOT moldable; integral molding is not only NOT taught by *Chen* ('644), it would NOT BE POSSIBLE to form the *Chen* ('644) device by such a manner, certainly not without significantly changing the principle of operation thereof.

Thus, for the reasons stated above, claims 5, 7, and 8 are patentable over *Chen* ('644).

Ground 5, rejection of claim 12

Claim 12

As to Claim 12, the Examiner's Answer refers to Figure 6 of Bury ('493) as showing "the arcuate hook possesses a hemispherical indent at its very end." The images below clearly depict the error of this assertion, wherein as described in Applicant's specification (page 8, lines 15-21), depicted in Figure 1A, and as claimed, the hook portion 40 of Applicant's device "is preferably flattened to hang facing forward," wherein "shaped portion 80 preferably causes apparatus 10 to hang facing forward on the small rod that is integral with modern wire closet shelving."

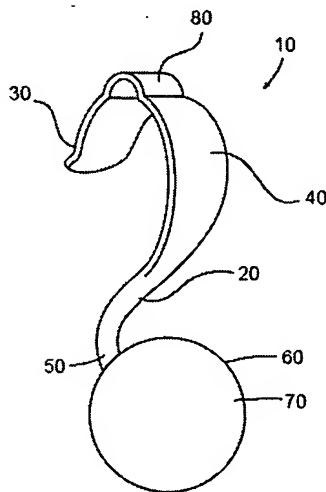


FIG. 1A

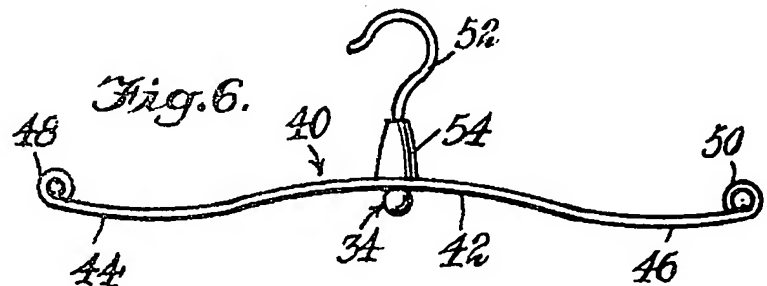


Figure 6 of Bury ('493) does NOT depict a hemispherical indent and flat surfaces for stabilizing a hanging device, as is required by Applicant's claim 12. Bury ('493) describes and shows ONLY a simple, known hook (reference numbers 32 and 52), with no further particularity and with no manner of structural stabilization in any direction.

Thus, for the reasons stated above, in addition to the reasons stated with regard to claims 1 and 11, Claim 12 is patentable, at least for the reasons stated.

Ground 6, rejection of claims 16 and 17

Claims 16 and 17

The Examiner's Answer fails to offer any support for the Examiner's contentions. As noted in Applicant's Appeal Brief, there is simply no foundational disclosure to support the Examiner's assertions because neither *Chen* ('644) nor *Lehmann* ('568) even arguably disclose "plurality of hanging arms, each

comprising a ball end, arcuate shaft and hanging end,” as required by the claims.

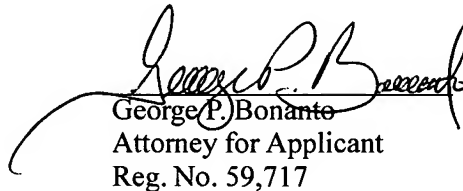
Claim 16 is, therefore, patentable over Chen ('644) in view of Lehmann ('568), at least because the Examiner has failed to establish where the plurality of hanging arms and means for interconnecting same is taught in the prior art. Further, Claim 17, depending from claim 16, is allowable as well, at least for the reasons stated with respect to claim 16, and as further discussed hereinbelow.

CONCLUSION

Applicant respectfully submits that the rejection of claims 1-21, made final in the Office Action dated October 26, 2006, should be reversed at least for the reasons stated above. Applicant further respectfully asserts that the refusal to enter Applicant's amendments to claims 1, 12, 14 and 16-20 (as proposed and filed on March 12, 2007), as reported in the Advisory Action dated April 6, 2007, was incorrect in stating that the proposed amendments "did not place the application in better form for appeal." On the contrary, Applicant's proposed, non-entered amendments further limited the structural configuration of the device, undoubtedly materially reducing the issues. Applicant attached the proposed, non-entered amendments as *EXHIBIT E* to Applicant's Appeal Brief, should consideration be desired.

Allowance of claims 1-21 is, therefore, respectfully requested. Or, in the alternative, amendment of claims 1, 12, 14, and 16-20, as previously proposed, with subsequent allowance of claims 1-21 is respectfully requested. Or, finally, in the alternative, the Examiner's withdrawal of the final rejection is respectfully requested, with prosecution reopened.

Respectfully submitted this 2nd day of January, 2008.


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CLAIMS APPENDIX

The following is a listing of the claims involved in the instant appeal.

1. (Previously Presented) A garment hanger comprising:

at least one generally arcuate member having a first end and at least one second end; and

at least one generally spherical-shaped member,

wherein said at least one generally spherical-shaped member is carried proximate to said at least one second end of said at least one generally arcuate member and said at least one generally spherical-shaped member receives and supports the garment.

2. (Original) The hanger of claim 1, wherein said first end of said at least one arcuate member defines a generally hook-shape.

3. (Original) The hanger of claim 1, wherein said at least one generally spherical-shaped member is a ball at least approximately two inches in diameter.

4. (Original) The hanger of claim 1, wherein said hanger is formed from a moldable material.

5. (Original) The hanger of claim 1, wherein said at least one generally arcuate member and said at least one generally spherical-shaped member are integrally molded.

6. (Original) The hanger of claim 1, further comprising at least one generally non-slip surface carried by said at least one generally spherical-shaped member.

7. (Original) The hanger of claim 1, wherein said at least one generally spherical-shaped member comprises a material selected from the group consisting of plastics and elastomers.

8. (Original) The hanger of claim 7, wherein said material comprises expanded polystyrene.

9. (Original) The hanger of claim 1, wherein said at least one generally spherical-shaped member carries a plurality of surface protrusions.

10. (Original) The hanger of claim 1, further comprising means for fixably attaching said at least one generally spherical-shaped member to said at least one generally arcuate member.

11. (Original) The hanger of claim 2, wherein said generally hook shape of said first end of said at least one generally arcuate member comprises a section having substantially flat surfaces defining at least a portion of said hook shape.

12. (Original) The hanger of claim 11, wherein said arcuate hook shape has at least one generally hemispherical indent therein, whereby said generally hemispherical indent serves to stabilize said hanger facing forward when positioned on an external support.

13. (Original) A method of hanging an object comprising the steps of:

a) obtaining an arcuate hanger having a first end, a second end and a ball-shaped support carried at said first end thereof;

b) hanging said second end of said arcuate hanger on an external support; and

c) hanging an object on said ball-shaped support of said arcuate hanger.

14. (Original) The method of claim 13, wherein said ball-shaped support is at least approximately two inches in diameter.

15. (Original) The method of claim 13, wherein said ball-shaped support has a non-slip surface thereon, and further comprising the following step:

d) positioning a garment over and substantially covering the surface of said ball-shaped support for retention thereby.

16. (Original) A clothes hanging apparatus comprising:

a plurality of hanging arms, each comprising a ball end, an arcuate shaft and a hanging end; and means for interconnecting said plurality of hanging arms.

17. (Original) The clothes hanging apparatus of claim 16, wherein said means for interconnecting comprises at least one connecting rod.

18. (Previously Presented) A garment hanging device comprising:

support frame;

at least one extension arm, having first end and second end, wherein said first end is secured to said support frame; and

at least one ball attached to said second end, wherein the garment hangs on said at least one ball.

19. (Original) The garment hanger of claim 18, wherein said at least one extension arm comprises at least one upper extension arm and at least one lower extension arm, and wherein said at least one ball comprises at least one upper ball attached to said at least one upper extension arm and at least one lower ball attached to said at least one lower extension arm.

20. (Original) The garment hanging device of claim 19, wherein said support frame is secured to a surface and said at least one upper ball extends approximately a diameter beyond said at least one lower ball in a direction away from the surface.

21. (Original) The garment hanger of claim 18, further comprising at least one ball attached proximate said first end and at least one ball attached between said first end and said second end approximately midway therebetween.